HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 325/2004

APPELLANT
OWNER : Dinesh Kumar Dubey

VERSUS

RESPONDENTS
CLAIMANT : Vishwanath Prajapati & others.

POST FOR JUDGMENT ON 01-05-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 325/2004

APPELLANT
OWNER

Dinesh Kumar Dubey,
S/o. Tarachand Dubey,
aged 30 years, R/o. Namnapara,
Ambikapur (C.G.)

VERSUS

RESPONDENTS
CLAIMANT : 1. Vishwanath Prajapati,
S/o. Jageshwar Prajapati, Police Crime Detector (Head Constable) Aged 48 years, R/o. Godhanpur Ambikapur, District Sarguja (C.G.)

DRIVER

2. Mohd. Firoz Ansari, S/o. Sahabuddin Ansari, Driver Village Joor, P.S. and Tahsil Surajpur, District Sarguja (C.G.)

Insurer

3. United India Insurance Com. Ltd. Through Branch Manager, Branch Rammandir Road, Ambikapur, District Sarguja (C.G.)

Present:
Mr. D.N. Prajapati, counsel for the appellant/owner.
Mr. Dashrath Gupta, counsel for the respondents No. 3.

J U D G M E N T
(Delivered on 01st May 2007)

Dhirendra Mishra, J

This miscellaneous appeal is directed against the award dated 24.11.2003 passed in Claim Case No. 2/2003 by II Additional Motor Accidents Claims Tribunal (FTC), Surajpur whereby a sum of Rs.43,315/- has been awarded in favour of respondent No.1/claimant and liability has been fastened on the appellant/owner and respondent No.2/driver and respondent No.3/insurer has been exonerated from the liability of payment of compensation.

2. Case of the applicant before the Tribunal was that on 20.3.2002 he was coming from Ambikapur to Surajpur by Jeep No. U.P. 64 A 5956, belonging to the appellant, which was being driven

by driver Firoz Ansari, respondent No.2 rashly and negligently and the same was overturned, as a result of which he sustained grievous injuries and became disabled. With these pleadings he claimed a sum of Rs.2,99,000/- by way of damages.

3. The appellant and the driver in their joint reply denied the allegations in the claim petition and stated that the vehicle was insured by respondent No.3 i.e. United India Insurance Co. Ltd. for the relevant time and liability, if any, is to be borne by the insurer.

4. Respondent No.3/insurer in its written statement stated that 12 to 13 passengers were traveling in a private jeep which could not be used for carrying passengers, the vehicle did not have valid registration or permit and the insurance was only for private purposes. Respondent No.2/driver did not have valid and effective driving licence to drive the taxi and thus, there was a breach of insurance policy, therefore, the claim is not maintainable against the insurance company.

5. On the pleadings of the respective parties, issues were framed and the Tribunal passed the impugned award by recording a finding that the vehicle was being driven rashly and negligently, as a result of which claimant sustained grievous injuries and he is entitled for a sum of Rs.43,315/- with interest at the rate of 7% per annum from the date of application. Liability was fastened on the appellant and respondent No.2. However, respondent No. 3/insurance company was exonerated by recording a finding that driver Firoz Ansari had driving licence for driving light motor vehicle and his licence did not have the stamping of P.S.V. (Public Service Vehicle) which was necessary for driving a transport vehicle and the capacity of the vehicle was only 9 passengers including the driver and the cleaner, whereas at the time of accident 12 to 13 passenger were traveling by the jeep. The jeep was a private vehicle which was being used as taxi for carrying passengers by charging freight and with these findings, it has been held that there was a breach of conditions of insurance policy.

6. Learned counsel for the appellant submitted that the appellant had obtained permit for Maxi-cab for the above route, the vehicle was insured with the insurance company/respondent No.3 as passenger carrying vehicle for carrying 9 passengers including the driver and the cleaner.

7. Relying upon the judgment in the matter of **B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.** reported in **1996 S.C.C. (M.A.C.), 382,** it is argued that the insurer cannot deny the claim for compensation on ground of breach of condition of insurance policy on account of vehicle carrying passengers in excess of permitted limit as the alleged breach is not of such a fundamental nature that insured should, in all event, be denied indemnification of compensation.

8. Further relying upon the judgment in the matter of **National Insurance Co. Ltd. Vs. Swaran Singh and others** reported in **(2004) 3 SCC 297,** it is contended that merely because the driving licence of respondent No. 2 was not stamped with P.S.V., cannot be a ground to the insurer to avoid its liability on ground of technical breach of policy conditions concerning driving licence.

9. On the other hand, learned counsel for the respondent No.3/insurer submitted that admittedly, the vehicle was being driven by respondent No.2/driver Firoz Ansari who had L.M.V. licence whereas the vehicle was being used as a transport vehicle. It was insured as a bus to be used as public service vehicle (PSV) and it was plying in the route on the basis of Maxi-cab permit. However, in these circumstances, endorsement of transport vehicle/public service vehicle (PSV) in the driving licence of respondent No.2/driver was necessary as per form prescribed under Section 10 of the Act. Since, the driver was driving the vehicle as per instructions of the appellant, who did not have valid and effective licence, the Tribunal has rightly exonerated the insurer from the liability of satisfying the award.

10. Reliance is placed on the judgment in the matter of **National Insurance Co. Ltd. Vs. Kusum Rai and others** reported in **2006 (2) T.A.C. 1 (S.C.).**

11. I have heard learned counsel for the respective parties and perused the material on record.

12. The short question involved for adjudication of this appeal is 'whether the Tribunal was justified in exonerating the respondent No.3/insurer from satisfying the award and saddling the insured and the driver with the liability of payment of compensation?'

13. It is not in dispute that the vehicle involved was a commercial vehicle and the same was plying on the permit of Maxi-cab in the route prescribed. The capacity for which the vehicle is insured was 9 passengers including the driver and the cleaner and at the relevant time 12 to 13 passengers were boarding the vehicle. It is also not in dispute that driver had a driving licence which authorized him to drive L.M.V. and it did not contain endorsement of transport vehicle/P.S.V.

14. As already pointed out in the foregoing paragraphs, the Tribunal has arrived at the conclusion that the vehicle in question was being run in breach of conditions of insurance policy on the ground (i) that the driver did not have valid and effective driving licence to drive commercial vehicle as he had only L.M.V. licence whereas the vehicle was a commercial bus which was being used for carrying passengers, and (ii) that the capacity for which the vehicle was registered was 9 and at the time of accident 12 to 13 passengers were traveling in the bus.

15. The Hon'ble Supreme Court in the matter of National Insurance Co. Ltd. Vs. Swaran Singh (supra) has held thus:

"When the person has been granted licence for one type of vehicle but at the relevant time he was driving another type of vehicle

88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor

vehicle would entitle the holder there to drive the vehicle falling within that class or description.

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are : (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are, "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle, "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor, "trailer", and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", (*sic* may be driving a vehicle) for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licnece. *In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type*

of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

16. In the instant case also, driver of the vehicle was having the licence of L.M.V. whereas he was driving a Maxi-cab. Defence of the owner and the driver in their written statement was that the driver was an experienced driver with long experience of driving, on the date of accident also he was driving the vehicle very cautiously with a moderate speed, however, because of failure of the steering, the vehicle derailed and plunged in a small trench.

17. On the basis of pleadings of the respective parties, the Tribunal framed issue No. 3 "whether the accident occurred because of failure of the steering?" and held that it has not been proved. From the evidence available on record it is clear that the appellant and respondent No.2/driver have categorically stated in their written statement that steering failure is the cause of accident and they have stated the same on oath and it has not been challenged by the insurer in the cross-examination of driver Firoz Ansari. However, the Tribunal has decided this issue against the appellant and respondent No.2 on the ground that the vehicle was got inspected during investigation by the police and as per inspection report of Ex.A/63, there was no steering failure, therefore, it is not proved that accident occurred because of failure of steering. Apart from other defects, it was pointed out in the inspection report of Ex.A/63 that tyrodmend was broken and vehicle was completely damaged. In view of the inspection report (Ex.A/63) the finding of the Tribunal that steering failure has not been proved, appears to be erroneous.

18. In the matter of National Insurance Co. Ltd. Vs. Kusum Rai and others (supra) it has been held that where the offending vehicle was being used as a taxi and was a commercial vehicle and the driver did not have valid and effective licence, in that case, liability of the insurance company *vis-a-vis* owner depends upon several factors and it is obligatory on the part of the owner to take adequate care to see that driver had valid and effective driving licence, the owner cannot contend that he has no liability to verify validity of driving licence

possessed by driver and where the driver was not possessing the valid licence, the insurance company is not liable to pay the claimed amount. In this judgment also, law laid down by the Hon'ble Supreme Court in the matter of Swaran Singh (supra) has been referred to with approval.

19. From the evidence available on record, I am of the considered view that insurance company has failed to lead evidence that the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. On the contrary from the facts it is observed that the possibility of the accident because of breaking of tyroidmend resulting in failure of steering, cannot be ruled out and in these circumstances, the insurer cannot be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

20. So far as the second ground that at the relevant time 12 to 13 passengers were occupying the vehicle which was insured for carrying only 9 passengers including the driver and cleaner is concerned, the Hon'ble Apex Court in the matter of B.V. Nagaraju (supra) while dealing with Sections 149 and 147 of the Act it has been held that where the vehicle is comprehensively insured and the policy of the insurance permitting carrying six passengers and the vehicle involved in the accident carrying nine passengers at the time of accident, denial of the insurer of claim for compensation on the ground of breach of condition of the insurance policy on account of vehicle carrying passengers in excess of permitted limit, cannot be held to be justified because merely lifting a passenger or two or even three in excess of number stipulated in policy could not be said to be such a fundamental breach that insured should, in all events, be denied indemnification of compensation.

21. In this case also, insurance company has been exonerated solely on the ground that some passengers in excess of permitted capacity were traveling in the Maxi-cab, however, it is nobody's case that the accident occurred because of this excess passengers, on the contrary as held above, possibility of accident because of failure of steering cannot be ruled out. The breach of policy conditions that

excess passengers were traveling, may not be a ground to exonerate the insurance company from satisfying the award.

22. In view of aforesaid discussion, the appeal stands allowed. The award impugned is modified to the extent that along with appellant and respondent No. 2, respondent No. 3 shall also be liable for payment of compensation to respondent No. 1 jointly and severely.

Sd/-
Dhirendra Mishra
Judge